

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 23-10063-shl

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5 In the Matter of:

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7 GENESIS GLOBAL HOLDCO, LLC,

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9 Debtor.

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11 United States Bankruptcy Court

12 300 Quarropas Street, Room 248

13 White Plains, NY 10601

14

15 April 25, 2023

16 2:35 PM

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21 B E F O R E :

22 HON SEAN H. LANE

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: ART

1 HEARING re Status Conference Re: Doc #252 Motion for  
2 Appointment of a Mediator

3  
4 HEARING re Status Conference Re: Doc #253 Motion to Shorten  
5 Time to Consider Debtor's Motion for Appointment of a  
6 Mediator and Order Appointing Mediator

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25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 THE COURT: Good afternoon. This is Judge Sean  
3 Lane in the United States Bankruptcy Court for the Southern  
4 District of New York, and we're here for a 2:30 status  
5 conference in Genesis Global Holdco. And so I just wanted  
6 to start by confirming that the intentions to have this on  
7 the record. I know there was some discussion back and forth  
8 about what best suited the needs of the parties, and so if  
9 I'm wrong about that, then that voice -- disembodied  
10 electronic voice that we heard that just said this is being  
11 recorded, we should remedy that, but otherwise, we'll  
12 proceed on the record.

13 So Mr. O'Neal, maybe I'll start with you to make  
14 sure that we're -- we've got it organized the way it should  
15 be.

16 MR. O'NEAL: Good afternoon, Your Honor. Yes,  
17 that's exactly right. This is on the record. We wanted it  
18 to be open to the public in the interest of transparency and  
19 other reasons. There may come a time where, you know,  
20 something more off the record is appropriate but we didn't  
21 think that was today.

22 THE COURT: All right. That's fine. So I have  
23 Mr. O'Neal's appearance so let me get the committee's  
24 appearance.

25 MR. SHORE: Good afternoon, Your Honor. Chris

1 Shore from White & Case on behalf of the UCC. I'm here with  
2 my partner Phil Abelson.

3 THE COURT: All right. Good afternoon. And let  
4 me get the ad hoc group's appearance.

5 MR. ROSEN: Thank you, Your Honor. Brian Rosen,  
6 Proskauer Rose. I apologize for the lack of tie and coat.  
7 I was caught unaware about this one. I'm along with my  
8 colleague Jordan Sazant.

9 THE COURT: All right. If that's the biggest  
10 problem I have today, then my life is truly blessed. No  
11 worries.

12 MR. ROSEN: Thank you.

13 THE COURT: Let me get -- any other appearances  
14 for folks who -- I'm sure there are a lot of people who  
15 might be here to listen so that's why I'll just send out the  
16 general request. Anyone else who wants to make an  
17 appearance?

18 MS. LIOU: Yes, Your Honor. Good afternoon.  
19 Jessica Liou from Weil Gotshall & Manges on behalf of  
20 Digital Currency Group.

21 THE COURT: All right. Good afternoon. Anyone  
22 else?

23 MR. FRELINGHUYSEN: Good afternoon, Your Honor.  
24 This is Anson Frelinghuysen from Hughes Hubbard & Reed on  
25 behalf of Gemini Trust Company LLC.

1 THE COURT: All right. Good afternoon. Anyone  
2 else? All right.

3 So I think we were going to talk about the timing  
4 of a motion, when we'd have a hearing. I think it was  
5 briefly touched upon so I'll turn it over to you, Mr.  
6 O'Neal, to sort of start us off.

7 MR. O'NEAL: Thank you, Your Honor. Sean O'Neal  
8 on behalf of the Debtors, Cleary Gottlieb Steen & Hamilton.  
9 I appreciate your setting up the time to have this  
10 discussion. It is just simply a status conference. We're  
11 going to attempt to have a scheduling discussion. There's a  
12 lot to say on the merits and we'll try to hold off on the  
13 merits.

14 I would just say that we've been having  
15 discussions over the past week with a variety of  
16 stakeholders, the ad hoc group, Jim and I, the unsecured  
17 creditors committee, and DCG among others. And late last  
18 night, we filed a mediation motion. Our hope has been that  
19 if we build a ballpark people will show up and that may  
20 still happen. But I think, Your Honor, we could use a  
21 little bit more time to have discussions among the  
22 stakeholders.

23 Our attempts to reach kind of an agreement on a  
24 mediation approach have not yet been successful. I think we  
25 have some possibility of achieving that result and so what

1 we'd like to do is, over the next few days, try to work on a  
2 -- kind of a consensual form of a mediation order and I'll  
3 get more into that. I will tell you that we are trying to  
4 do what's best for the estate. We are concerned that we've  
5 hit a bit of an impasse. We had some strong momentum going  
6 when we filed our term sheet on February 10th and then we've  
7 kind of -- you know, kind of -- since that time, we have not  
8 made as much progress as we would like.

9 We do take our direction from the special  
10 committee, and the special committee has been clear at every  
11 step that our job is to maximize creditor recoveries and try  
12 to get recoveries in the hands of creditors as soon as  
13 possible, and that's really our guiding light.

14 In terms of the mediation itself, we're going to  
15 try to work through the issues over the course of the week.  
16 We've asked for proposals from the creditor constituencies  
17 as to how they would like to approach mediation. We haven't  
18 yet received those proposals. We have asked for them. I  
19 would say at that this point, we still are working through  
20 issues such as the selection of a mediator, the timing of  
21 the mediation, the duration of the mediation, and the scope  
22 of the mediation. You know, we may in fact need a mediator  
23 to mediate how we're going to mediate.

24 It is -- we are in a state right now where we're  
25 trying with all of our efforts to create a platform that



1 achieves a consensual resolution that is better than the  
2 plan we originally proposed which is simply a litigation  
3 trust. And so, Your Honor, I think that, you know, over the  
4 next week, we hope to achieve some kind of resolution about  
5 how we want to approach the mediation, but at some point, we  
6 may just ask you to approve a mediation motion even without  
7 Creditor support. As Your Honor knows, you have the ability  
8 to order sua sponte mediation. We'd like to try to help you  
9 first, but if our efforts fail, we may need to ask you for  
10 help.

11 So I think what our suggestion would be, Your  
12 Honor, is to, rather than have the hearing on Wednesday as  
13 we had proposed in our mediation motion last night, we would  
14 like to set that motion up for next week, maybe towards the  
15 latter part of the week, you know, anywhere from May 2nd to  
16 May 5th, and, you know, that might be an evidentiary hearing  
17 so just bear that in mind, Your Honor. But that would be  
18 our desire. Try to use that date to see if we can achieve a  
19 consensual approach to the mediation and if we can't, we'll  
20 appear before you and try to hash it out.

21 THE COURT: All right. I'm going to circle the  
22 virtual room in a second here but just a couple of  
23 preliminary thoughts.

24 I can't see any way in the world that an  
25 evidentiary hearing on a mediation request is a good idea.

1 I suppose in this job I've learned to say that -- I've  
2 learned that, you know, it's always something new that you  
3 hadn't thought of but that seems highly improbable to be a  
4 good idea.

5 And then I will say two contradictory things, but  
6 I guess the shoe fits in that vein. One is, in doing a  
7 mediation panel a while back with an academic, the academic  
8 on the panel said something that was surprising to me that  
9 studies have shown that whether people are -- volunteer for  
10 mediation or it's done without -- not at their request that  
11 the success rates in studies have shown that there's  
12 actually no difference which I actually found to be a  
13 surprising statistic and some of the bankruptcy judges in  
14 the room who heard the academic gave her a little bit of a  
15 stress test on that because they were also surprised.

16 That said, my experience, buy-in is always good  
17 for a lot of reasons, all of which you know so I won't bore  
18 you with a lengthy discussion of that. I anticipated that  
19 we would be angling towards sometime next week. That sounds  
20 sensible to me, and I have dates that we can talk about next  
21 week. So with that, let me circle the room and I'll start  
22 with the committee.

23 MR. SHORE: Thank you, Your Honor. Chris Shore  
24 from White & Case on behalf of the committee.

25 Yeah, I've heard those studies before and I've

1       seen courts actually rule the other way and circuit courts  
2       rule the other way so (indiscernible) my experience, buy-in  
3       is always great so we're heartened by the Debtor's decision  
4       to seek out buy-in over the next week.

5               I just want to make a couple of points. First,  
6       with respect to the evidentiary issue, I don't know whether  
7       Your Honor had an opportunity to see the proposed order, but  
8       in the first paragraph of the proposed order, the Debtor's  
9       are seeking an order of the Court authorizing them but not  
10      requiring them to forebear on the extension of a \$600-plus  
11      million loan with the parent. That's the issue that we're  
12      going to try to work through. There is --

13             THE COURT: Yeah. Well, no, that -- I actually  
14      consider that to be -- I understand why it's in this  
15      conversation but that's a substantive issue, right, in terms  
16      of people's rights and I understand that. It may be that  
17      it's the thing that needs to be addressed to open the window  
18      to the possibility of having sufficient time, and we all  
19      know that it's very difficult to predict how long mediations  
20      will last. I mediated Aeromexico and that was a plan  
21      mediation and I think when I was originally invited to do  
22      that, people said, well, that's -- we really need something  
23      quick this summer. And as the calendar turned month to  
24      month, it just -- you don't know.

25             So I'm going to stay out of that. In my head,

1 I've sort of put that to the side. I understand why it's  
2 part of this conversation, but I also understand that's  
3 substantive in a different way than simply who's the  
4 mediator, what's the process. Got it.

5 MR. SHORE: Second, I would ask Your Honor to  
6 encourage the parties in due respect. Encourage the parties  
7 to really engage on the process that we don't have to have  
8 that hearing. Maybe you don't need to do that. We're all  
9 supposed to be doing that anyway. But also have Your Honor  
10 encourage people not to be out in the public talking about  
11 the mediation.

12 There have been some tweets fly around. DCG put a  
13 tweet out this morning about the process. I think it's  
14 going to be much easier for the parties trying to set the  
15 table if the Twitterverse isn't exploding over the mediation  
16 --

17 THE COURT: So I will jump in immediately on that.  
18 This case has the benefit of having a lot of experienced and  
19 highly competent attorneys, and while clients, obviously,  
20 it's your money, it's your time, it's your interest, but  
21 there are times when it is highly advisable to let the  
22 lawyers that you think are really great which is why you've  
23 hired them to let them do their jobs.

24 This is one of those times, and so I think any  
25 stray comments, you know, even when we're talking about

1 institutions and things here -- people are people. It can  
2 rub people the wrong way. It can make people unwilling and  
3 unhappy about pursuing reasonable courses of action. So  
4 bankruptcy court works really well and a lot of things get  
5 resolved because people act in an economically rational way,  
6 but if it becomes personal, all those rules get upended.  
7 And again, I'm not telling you all anything you don't  
8 profoundly know, but sometimes it's helpful to hear it from  
9 somebody's who's wearing a robe for better or for worse.

10 So, yeah, everybody should -- as Judge Chapman  
11 would say -- keep your powder dry, keep your personal views  
12 out of this. You have lawyers. There's a reason you have  
13 lawyers. People should -- also mediation is meant to be  
14 confidential and so if we start the process -- before we  
15 even get to the process, people are sort of firing off in  
16 all different directions, it makes the ability for this  
17 process to work greatly diminished.

18 So, yes, people should treat this as a discrete  
19 matter that is not supposed to be discussed in public  
20 extensively and lower the temperature in the virtual room  
21 because that raises the chances of success.

22 So, I'm sorry, Mr. Shore, I cut you off.

23 MR. SHORE: No. Thank you, Your Honor for that.

24 And then last, as far as the actual setting, if we do it  
25 next Thursday or Friday for two reasons. One, I'm hoping we

1 won't have to make it an evidentiary issue, but if it is  
2 going to be one, we're going to need to get some maybe  
3 discovery out of at least have a substantive meeting so we  
4 can understand (indiscernible).

5 And second, I've got a trial that starts in DC on  
6 Monday morning. If I -- it'll have calmed down by the  
7 latter part of the week, but I anticipate I'm going to be  
8 full steam ahead on Monday, Tuesday, and Wednesday.

9 THE COURT: All right. All right. And let me  
10 hear from the ad hoc group.

11 MR. ROSEN: Thank you very much, Your Honor.  
12 Brian Rosen, Proskauer Rose.

13 As all the attorneys know on this call, the ad hoc  
14 group is perfectly prepared to participate in mediation. We  
15 just need to, as Mr. O'Neal has said several times over, set  
16 the table correctly and make sure that everybody is prepared  
17 for the conduct of the mediation. And in that regard, it's  
18 critically important from our perspective that we get the  
19 benefit of a lot of information that has been passed around.  
20 And we know from Mr. O'Neal that he is going to do his best  
21 to do it and to provide that for us, and I hope that we get  
22 the same benefit from DCG.

23 I appreciate what the Court said about the  
24 Twitterverse because that has been an issue and we're very  
25 glad by the Court's comments in that regard. And I'm also

1 very glad about --

2 THE COURT: Well, all I will say is -- I may have  
3 bored one or two of you with this comment in the past -- I  
4 have a box in my office that I keep in the closet of various  
5 things from my prior life as a lawyer to remind me of how  
6 difficult it can be in the attorney/client relationship and  
7 people having strong views. So I no longer have that  
8 problem. I've exchanged that for other problems -- well,  
9 challenges. It's not a problem. It's a challenge. So, yes  
10 -- so again, you know, things work well in this court  
11 because we have a very impressive bar that is very good at  
12 what they do. And so we really -- cases should take  
13 advantage of that. So go ahead, Mr. Rosen.

14 MR. ROSEN: Thank you, Your Honor. With respect  
15 to the forbearance, we also agree with you because that is  
16 something that we believe that at the point that we get  
17 involved in mediation, if necessary, we believe it's  
18 something that the mediator should take up with the parties  
19 and if it's in the best interest of the mediation, go  
20 forward. I'm sure everybody will reach the correct  
21 conclusion.

22 Your Honor, as far as timing, you know, we'll work  
23 with whatever works best for all the parties and the Court.  
24 You know, we're just happy to get his process moving along  
25 as quickly as possible, and we're prepared to be engaged in

1 the mediation as I said before. Thank you.

2 THE COURT: All right. Thank you very much.  
3 Anyone else who wishes to be heard on the issues we're  
4 discussing?

5 MR. O'NEAL: Your Honor, I don't know if I'm  
6 permitted to speak again but would like to follow --

7 THE COURT: You are but let me just make sure  
8 there's no one else. I -- sometimes I see people --

9 MR. O'NEAL: Certainly.

10 THE COURT: -- appear to be gesturing towards  
11 their computer to unmute themselves but I'm never quite sure  
12 so I always want to wait a beat to see if there's anybody  
13 else who wants to be heard, and I do see a hand raised.  
14 Thank you very much for that. That's a clear sign. So Mr.  
15 O'Neal, I think we'll leave you bat cleanup.

16 So Mr. Anson.

17 MR. FREYLINGHUYSEN: Yeah, Anson Frelinghuysen  
18 from Hughes Hubbard & Reed for Gemini Trust Company.

19 We just want to say how important it is for Gemini  
20 Trust Company on behalf of its 340,000 users that this  
21 process be accelerated. We were extremely pleased with the  
22 momentum that brought us through to the proposed term sheet.  
23 That was two months ago -- a little more than two months ago  
24 -- and since then, it has been very slow to the point where  
25 we are dealing with a lot of issues every day from our



1 (indiscernible) users that are stuck in the Genesis  
2 bankruptcy, and we are trying our best to do the best for  
3 them and it seems at times it is going in the right path.

4 MR. FREYLINGHUYSEN: Mr. O'Neal mentioned that we  
5 might need a mediator for our mediator session. That is an  
6 unacceptable -- it's a funny --

7 THE COURT: No, I think that was just trying to  
8 find humor in the challenges that everyone faces.

9 MR. FREYLINGHUYSEN: Right. But I think it belies  
10 the problem where we have, you know -- constantly butting  
11 heads and I really would encourage --

12 THE COURT: Don't worry. I promise you I will not  
13 appoint a mediator to determine the ground rules for  
14 mediation. Whatever is going to happen, I can promise you  
15 that's off the table.

16 MR. FREYLINGHUYSEN: We are just down the street  
17 from most of these parties and most of these attorneys.  
18 We're in the office every day. We're ready to meet with  
19 them. We're ready to talk. We're ready to get a deal done,  
20 and we're ready to do that for our users, and we hope that  
21 all the other parties are too. And we're ready to mediate  
22 if that's what needs to happen. It doesn't seem to be the  
23 time for it, though.

24 THE COURT: All right. Anyone else who wishes to  
25 be heard?

1 MS. LIOU: Yes, Your Honor. Jessica Liou from  
2 Weil on behalf of Digital Currency Group.

3 I just want to echo everyone's comments and  
4 indicate that DCG is prepared to participate in the  
5 mediation process and that we are generally supportive of  
6 any process that will bring the parties together in a  
7 constructive and productive manner to fashion a consensus  
8 that minimizes costs to the Debtors' estates and their  
9 Creditors and maximizes recovery overall to all the Creditor  
10 groups.

11 I do want to say that putting aside whatever  
12 mischaracterizations may have been made about my client's  
13 statements publicly or otherwise in the Twitterverse, we all  
14 take the judge's comments to heart and we hope that everyone  
15 else here as well takes the judge's comments to heart about  
16 the public statements that can be made that both result in a  
17 productive process all in a productive --

18 THE COURT: All right. Yeah, my intent is not to  
19 point a finger at anyone. My intent is to just help the  
20 parties move forward so let me make that clear. Anyone else  
21 who wishes to be heard? All right.

22 Before Mr. O'Neal jumps back in, I have -- let me  
23 ask the specific question. What is the deadline here that  
24 is driving the timing -- and I know that was the substantive  
25 issues that Mr. Shore mentioned before about essentially --

1 that's wrapped up in all this. What's that date?

2 MR. O'NEAL: Sure, Your Honor. I think there's a  
3 few things going on. I mean, one is, to what counsel to  
4 Gemini stated, is just the desire to move more quickly  
5 because every moment of this case as long it goes, you know,  
6 has a -- delays and it delays Creditor recovery. So I think  
7 we start with that proposition which is that we had a term  
8 sheet that was agreed upon and -- on February 10th. It's  
9 now, you know, almost three months --

10 THE COURT: No, no, I got that. But what is the -  
11 - it sounds like there's a deadline coming up --

12 MR. O'NEAL: Yeah, and that's the next --

13 THE COURT: -- there's a general idea of pushing  
14 off that deadline to allow mediation. My question is, what  
15 is that deadline.

16 MR. O'NEAL: Sure, sure. And -- but I just wanted  
17 you to know that there's -- that it's an overall desire to  
18 move as well. But on May 9th, 10th, and 11th, DCG owes GGC  
19 appropriate in total \$630 million.

20 THE COURT: All right.

21 MR. O'NEAL: May 9th is about 200 million. May  
22 10th is about 100 million, and then May 11th is around 330  
23 million.

24 THE COURT: All right.

25 MR. O'NEAL: And so --

1 THE COURT: So -- but let me -- so let me build on  
2 that a bit. As you all know in your experience, things work  
3 least well when people have to act to protect their rights  
4 as a theoretical matter, right, to say, well, you know,  
5 let's talk about an extension. What does that look like and  
6 how is it going to play out and things.

7 My suggestion is that's it's April 25th. There is  
8 time between now and May 9th to address this question of  
9 whatever the deadlines are. I'm not saying they're not  
10 important. They're obviously hugely important. But if we  
11 let that bog us down before we actually go ahead with  
12 mediation -- you can have mediation sessions that happen  
13 between now and the first of these deadlines. You can  
14 mediate the entire thing theoretically.

15 And so my thought is that the theoretical issues  
16 that will -- where the rubber hits the road on May 9th,  
17 10th, and 11th -- let's just -- everybody preserves their  
18 rights and why not leverage those deadlines as a way to try  
19 to get this process moving, and we can talk about it at the  
20 same time. Now if the mediation falls apart or is  
21 threatened to fall apart because of it, then we can talk  
22 about it and I'm happy to do that. Everybody keeps their  
23 powder dry by agreeing to move forward with the mediation.  
24 Nobody's waiving their rights on any of this substance of  
25 what happens on the 9th, 10th, and 11th.

1 But my thought is, we're -- you don't want to  
2 fiddle while Rome burns so I'm just wondering if it isn't  
3 wise, if you get a mediator and pick some dates and try to  
4 get some things done, that we do that, and if the mediation  
5 order needs to be explicit to reserve everybody's rights on  
6 that substantive issue -- which I don't think is necessary  
7 but I understand people get nervous and they don't want  
8 their consent in one thing to be construed in -- as consent  
9 on something else -- we can make that very explicit. And I  
10 will remain available to deal with those issues if we need  
11 to get there.

12 But I just don't want to have people gear up the  
13 war machine to deal with those issues in an evidentiary way  
14 when you're really are hoping to have discussions. So  
15 again, I realize I'm not in the room and I learned as a  
16 lawyer on that side of the bench that judges are always not  
17 as well informed about what's going on in the case as the  
18 lawyers are so there's that caveat for my comments. At the  
19 same time, whenever I have to deal with cases where people  
20 are sort of protecting their rights -- say, Judge, we don't  
21 know if we're going to get there, but if we get there, we  
22 have the following problems with this issue -- it's always -  
23 - it's almost always inefficient and if we can find a way to  
24 at least kick that can down the road a little bit to allow  
25 some progress or process to start that everybody agrees that

1 that's otherwise a good idea, let's see if we can navigate  
2 that.

3 And I'm happy to make myself available to talk  
4 through that, to talk about language, to do whatever it  
5 takes to get there. And in the meantime, you can -- if you  
6 haven't secured somebody who wishes -- is willing to mediate  
7 yet, then I'm happy to help you with that as well. But I  
8 understand, there's a significant issue out there. It's  
9 clearly a significant issue, but today's the 25th of April.  
10 That's May 9th and it's the bankruptcy court where we do a  
11 lot of things in a really short amount of time, and so I  
12 throw that out there for what it's worth in terms of trying  
13 to move the process forward.

14 MR. O'NEAL: Your Honor, may I just maybe hop in  
15 here on two points. One, would you entertain -- if  
16 everybody who is a named mediation party came up with an  
17 agreed mediation order, would you entertain it under a COC?  
18 And then we don't have to wait until the end of next week to  
19 try to get somebody in place.

20 THE COURT: If there's an agreement to mediate and  
21 you all have a proposed order and you want to submit it to  
22 me, I will sign it. Yes. And so I trust that you all are  
23 keeping people involved and so nobody has some profound --  
24 there's nothing that's profoundly odd about the order that  
25 somebody feels surprised about.

1 But if it's a mediation order that's sort of a  
2 standard order, yeah, you get it to me. You can put it on  
3 presentment for -- you give it to me that day and you put it  
4 on presentment to 12:00 noon the next day. I'd have no  
5 problem with that. We're here to try to help the parties  
6 get done what they need to get done. Yeah, absolutely.

7 MR. O'NEAL: And just so Your Honor can understand  
8 and I think you appreciate, we're all -- everybody on this  
9 Zoom right now is involved in other crypto cases. We're  
10 speaking from just experiences in what has gone on in the  
11 past and every single case where you blow a maturity on a  
12 loan and extend it out and then it gets paid, those -- all  
13 debtors get caught in a situation where their repayments get  
14 clawed back as a preference or anything else. There are a  
15 lot of economic issues that's surround the extension of a  
16 loan to a party who is engaged in the crypto space.

17 So we'll work --

18 THE COURT: I can imagine.

19 MR. O'NEAL: -- but it's going to -- it has to be  
20 addressed.

21 THE COURT: Yeah. And so one way to do that would  
22 be to schedule -- I'm a big fan of regular status  
23 conferences which allow people to say, Judge, I'm getting  
24 nervous about this issue. I want to tell people and  
25 publicize that I'm getting nervous about this issue. I'm

1 not filing something but if I do need to file something,  
2 what time would work for the Court to put everybody on  
3 notice. But it allows people to not have to start to file  
4 things and so we can have as many status conferences as are  
5 helpful so that people can keep their powder dry and not to  
6 file an engage on the issues but -- again, I understand.

7 I'm not surprised that there's a huge amount of  
8 issues dealing with the extension and maturity. That makes  
9 perfect sense to me. I mercifully don't know what all of  
10 those issues are yet, but we'll get there if we have to get  
11 there. But I certainly think process-wise, we can hopefully  
12 find a way given the smarts of the people on this call to at  
13 least table that for a little bit so that you can get the  
14 mediation off and running as quickly as possible. Have as  
15 many sessions as you can squeeze in.

16 And then also a certain -- people don't want to  
17 agree to things when they feel like it's a blank check.  
18 Nobody likes a blank check. And so I can understand that in  
19 the context of a mediation it might be easier to reach  
20 certain kinds of agreements about the commercial realities  
21 you all face. But again, you know better than I do on that  
22 front. So Mr. O'Neal, I know we were going to circle back  
23 to you.

24 MR. O'NEAL: Yeah. Three points. Number one is,  
25 what we're trying to achieve is actually that consensual



1 order that we can present to you. Then we don't need a  
2 hearing. So we'd like to use the next few days to do that.

3 THE COURT: Yeah. I mean, my thought is, take a  
4 sample form order and if there's a speech somebody wants to  
5 make on the record so that they preserve their rights if  
6 you're having trouble ironing out the precise  
7 (indiscernible) go in the order -- don't wait. I'll -- you  
8 can put it on for -- you can get a garden variety order.  
9 You all have them, a mediation order, and you say, Judge,  
10 our agreement to do this is conditioned on the following.  
11 And then make that speech on the record and make whatever  
12 record you need to do -- anybody needs to -- to lower the  
13 blood pressure of their clients. That's fine.

14 I'm open to suggestions I guess is what I'm saying  
15 as to how to best do that in an efficient way that doesn't  
16 waste all of your time and money and your clients' money and  
17 allows you to go forward. So my thought is, don't -- I  
18 wouldn't dither in the sense saying, well, we're going to  
19 work on perfect language. Let's just get a form order and  
20 get it entered, and, again, I'm happy to put anything on the  
21 record that people want to do. That sometimes is just  
22 easier to do.

23 But, again, you all are smart people. You'll come  
24 up with suggestions, but the sooner the better in my eyes  
25 and I'm -- I'll make myself available at the drop of a hat.

1 You just let me know and we can have whatever proceedings  
2 you need to say whatever needs to be said on the record to  
3 smooth the pathway.

4 MR. O'NEAL: We appreciate that, Your Honor.

5 And I'm going to -- there's a little bit more  
6 context on the forbearance issue that I just want to  
7 describe. I really don't want to go down the rabbit hole,  
8 but I do want to give you a little bit of insight into some  
9 of the views, which is basically that the desire is to have  
10 people focused on the mediation and a potential resolution  
11 versus obtaining financing to take out the debt that is due  
12 on May 9th, 10th, and 11th, and then the implications that  
13 the financing could have with terms of financing, expense of  
14 the financing, the rights that the lenders may have under  
15 that financing.

16 So it is a rather -- you know, there are creditors  
17 that are worried about that as well so I just wanted to give  
18 you that insight. I don't want to go down too far into that  
19 road, but I did want you to know that it's a rather  
20 complicated issue as you --

21 THE COURT: Listen, I totally understand that in  
22 my job it's much easier to simplify these things because I  
23 don't have to deal with those realities and I have no doubt  
24 that it is not nearly as simple as one might hope. And so  
25 it's not as easy as just waving it off until the last second

1 because given what you need to do, it's unclear what that  
2 is.

3 MR. O'NEAL: Correct.

4 THE COURT: I guess my thought is that, rather  
5 than let it be an impediment to starting conversations,  
6 let's not do that, and if it means that people have to do  
7 work on both fronts, that may be somewhat regrettable but it  
8 might be better off to just get that mediation started so  
9 that you can see what progress you're making.

10 MR. O'NEAL: Understood, Your Honor. Appreciate  
11 those comments and that guidance.

12 I think next step is -- we just need to identify  
13 the date of a hearing. I think Mr. Shore had requested May  
14 8th. I think we do have some concerns just from a timing --

15 THE COURT: Well, here's my thought is, if you can  
16 come up with a garden variety order, just give it to me. I  
17 mean, you know, if your deadline is May 9th and we're  
18 talking about May 8th, I don't think we've succeeded this  
19 afternoon as -- the way we had hoped.

20 So, you know, my thought is, I don't know why that  
21 can't be just done this week -- an order can't be entered  
22 sometime this week if it's not something that you need a  
23 knock-down, drag-out fight over. And the mediation process  
24 itself (indiscernible) right? What I haven't heard today is  
25 somebody say, Judge, we think mediation's a terrible idea

1 and we don't want to do it.

2 So in light of that, let's just get a mediation  
3 order entered even if it's a vanilla one-paragraph order  
4 that appoints a mediator and reserves everyone's rights on  
5 all other issues.

6 MR. O'NEAL: Sure. Can we set up a date for a  
7 hearing in the event that we don't achieve that consensual  
8 approach or a status conference or something --

9 THE COURT: Well, my thought -- yeah. I'm happy  
10 to do that. I'm happy to set up a status conference. Today  
11 is -- what -- Tuesday? I certainly have time Friday, but  
12 I'm happy to set it up before then if just to keep the  
13 pressure on. I mean, again, you'll have to tell me what's -  
14 - I don't want to waste all your time and have everybody get  
15 together and you say, well, Judge, we'll still working on  
16 it.

17 But if the deadline for the 9th, 10th, and 11th  
18 are a concern, it seems like a terrible idea to wait to get  
19 an order entered until later. But, again -- you know, I  
20 never get a full picture so there's clearly other things  
21 going on here that are more complicated than we've gotten a  
22 chance to get into today, but I'm happy to set whatever  
23 conference date this week works.

24 And I understand Mr. Shore has got some other  
25 things going on. That's perfectly fine and understandable.

1 I guess my thought is if we can make it so that the order  
2 that's entered is nothing that's controversial then he  
3 doesn't have to engage in -- at least in this courthouse in  
4 any sort of contested hearing or something that requires  
5 that kind of band width. But, again, you'll have to let me  
6 know if this works.

7 MR. O'NEAL: Sure. And --

8 THE COURT: And this is putting aside getting a  
9 mediator in the first instance so you'll have to let me know  
10 where you are on that. I know from my own experience that  
11 that can be done in a lot of different ways. Because I  
12 don't know the timing of everything and that's what we're  
13 talking about, I haven't sent out an email request to my  
14 colleagues. I do know that from my own personal experience  
15 I have gotten calls in cases from people saying, are you  
16 free for mediation. My usual response is, does the judge  
17 whose case this is know you're calling me.

18 So I'm happy to have you call people if you think  
19 that that's useful and try to set that up. Just do me the  
20 favor of always letting that judge know -- we've spoken to  
21 Judge Lane. He said it's okay to call just so that they  
22 don't -- they sort of can check that box off and then think  
23 about their timing.

24 But -- so let me ask the group then, what do you  
25 think would be helpful? Do you want to get together

1 tomorrow? Do you want to get together Thursday? Do you  
2 want to get together Friday? Again, just as a status not as  
3 a substantive hearing just to figure out where we are.

4 MR. O'NEAL: Your Honor, I believe that a Friday  
5 status conference would give us sufficient time to try to  
6 reach a conclusion, but I'm looking to my colleagues on the  
7 screen to see if that sounds amenable to them. Any  
8 (indiscernible)?

9 MR. ROSEN: Sean, this is Brian. Other than the  
10 fact than you -- Sean meaning Sean O'Neal, excuse me --  
11 sorry about that.

12 THE COURT: Not at all.

13 MR. ROSEN: Friday would be fine, Sean, although  
14 you and I have something we have to do from 10:30 to 12:00 I  
15 think.

16 MR. SHORE: Can we do it early in the morning?

17 MR. ROSEN: That's fine with me. 9:00 a.m. is  
18 fine, Chris.

19 MS. LIOU: Fine here.

20 MR. FREYLINGHUYSEN: That also works for Gemini.

21 THE COURT: All right. So we'll say Friday at  
22 9:00, status. Nobody needs to be file anything. It's an  
23 opportunity to vent -- to air any concerns you have with  
24 everybody preserving all their rights. And if I can be  
25 helpful before then, fine. Just let me know and also if you

1 reach a -- there's a way to resolve the issues and you have  
2 a form order, just get it to me and we'll think about what  
3 the process is to get that entered if it's notice of  
4 presentment or even if it's a stipulation. Whatever it is.  
5 We can figure out how to do it promptly so that would be  
6 fine.

7 So for Friday, I'm assuming it's on the record and  
8 if for some reason that changes, you know, let me know, and  
9 just to assuage any concerns, in suggesting bench  
10 conferences, again, I throw that -- I'm not suggesting  
11 offering them. I offer them just because I don't know  
12 what's going on and there have been times I've been told by  
13 attorneys it would be helpful to have something off the  
14 record so that you're not having sensitive discussions in  
15 the public. But, again, it's always a condition upon folks  
16 who are interested parties to be included in those bench  
17 conferences. So, again, I just make those offers just to  
18 see, again, whatever's useful for the case, to keep the case  
19 moving and so I'll be guided by the parties' wisdom on that.

20 MR. O'NEAL: Thank you, Your Honor. The bench  
21 conferences in the White Plains Bankruptcy Court are  
22 legendary so we appreciate your offer.

23 THE COURT: Well, I have big shoes to fill that  
24 way. I know Judge (indiscernible) accomplished at that.

25 MR. O'NEAL: And lastly, to avoid any confusion, I

1 was not serious when I said that we need a mediator for a  
2 mediator so I do want to clear that up. So thank you very -  
3 -

4 THE COURT: We find humor where we can. That's  
5 perfectly fine. All right. With that, anything else from  
6 any other party?

7 MR. SHORE: No, sir. Thank you.

8 MR. ROSEN: I think we're going to need a setting  
9 on the 353 aspect but why don't we just take that up on  
10 Friday if we haven't worked it out.

11 THE COURT: All right. All right. I will see you  
12 all -- I'll see some of you I guess tomorrow for other  
13 things and I will see you all on Friday at 9:00 a.m. Again,  
14 if I can be of any help between now and then, talk amongst  
15 yourselves and then just reach out to chambers.

16 And with that, have a good rest of your afternoon.

17 MR. O'NEAL: Thank you.

18 THE COURT: Thank you.

19 MS. LIOU: Thank you.

20 MR. SHORE: Thank you, Your Honor.

21 MR. FREYLINGHUYSEN: Thank you, Your Honor.

22 (Whereupon these proceedings were concluded at  
23 0:00 PM)

24

25



C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: April 28, 2023

[& - appearances]

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